THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 25164 of 2006

Oral order:

The petitioner is working as Superintendent in the 3rd respondent-Sri Raja Rajeswara Swamy Devasthanam, Vemulawada, and while so, the 1st respondent, namely the Commissioner of Endowments, A.P., Hyderabad, issued proceedings in Rc. No. B2/25116/2004-I, dated 18.11.2006, reverting the petitioner to the post of Senior Assistant and posted him to work in Sri Lakshmi Narasimha Swamy Devasthanam, Yadagirigutta. It is these proceedings of the 1st respondent, which the petitioner seeks to call in question in this writ petition, as being illegal, arbitrary, contrary to G.O. Ms. No. 888, Revenue (Endowments-I) Department, dated 08.12.2000 and violative of the orders of this Court in W.P. No. 9636 of 2004, dated 10.09.2004 and W.A. No. 1434 of 2004, dated 22.08.2006.

A few facts, necessary for disposal of the writ petition, and which are not in dispute, may be noted, and they run thus:

The petitioner while working as Senior Assistant in Ujjayani Mahankali Temple, Secunderabad, (hereinafter referred to as 'Mahankali Temple'), was transferred to Sri Ganesh Temple, Secunderabad (hereinafter referred to as 'Ganesh Temple'). While he was working there as such, vide proceedings dated 22.05.2004, the Executive Officer of Ganesh Temple, promoted the petitioner as Superintendent.

Assailing the said promotion of the petitioner, the 2nd respondent, who was working as Senior Assistant in Ganesh Temple, filed writ petition in W.P. No. 9636 of 2004, *inter alia* contending that each institution or endowment shall be a unit for the purpose of recruitment, seniority and promotion, and since the petitioner does not belong to Ganesh Temple, he could not have been promoted as Superintendent in Ganesh Temple, and he being the senior-most Senior Assistant in Ganesh Temple, alone is entitled to be promoted as Superintendent. The petitioner contested the said writ petition, and this Court by order dated 10.09.2004, allowed the writ petition and set aside the promotion of the petitioner and directed the

official respondents therein to consider the case of the 2nd respondent for promotion along with other eligible employees, if any, from the same unit, to the post of Superintendent. The petitioner questioned the order in the writ petition in writ appeal in W.A. No. 1434 of 2004, and a Division Bench of this Court, by judgment dated 22.08.2006, dismissed the writ appeal confirming the order in the writ petition.

During the pendency of the writ appeal before the Court, the 1st respondent transferred the petitioner to Sri Raja Rajeswara Swamy Devasthanam, Vemulawada (hereinafter referred to as 'the Vemulawada Temple') and the 2nd respondent to Sri Lakshmi Narasimha Swamy Devasthanam, Yadagirigutta (hereinafter referred to as 'Yadagirigutta Temple'). In implementation of the judgment in the writ appeal, the 1st respondent issued the impugned proceedings dated 18.11.2006, reverting the petitioner from the post of Superintendent to the post of Senior Assistant, and promoting the 2nd respondent from the post of Senior Assistant to the post of Superintendent, and posting them to Yadagirigutta Temple and Vemulawada Temple, respectively.

The learned counsel for the petitioner submits that as per Rule 33 of the A.P. Charitable and Hindu Religious Institutions and Endowments Office Holders and Servants Service Rules, 2000 (hereinafter referred to as 'the Rules') issued by the Government in G.O. Ms. No. 888, Revenue (Endowments-I), dated 08.12.2000, each institution or endowment shall be a unit for the purpose of recruitment, seniority and promotion. He submits that since the petitioner belongs to Mahankali Temple and the 2nd respondent belongs to Ganesh Temple, the said Temples shall be their respective units, for the purpose of recruitment, seniority and promotion.

He submits that since it is neither the case of the petitioner nor that of the 2nd respondent that they belong to Vemulawada Temple, the 1st respondent could not have issued the impugned proceedings, reverting the petitioner from the post of Superintendent to the post of Senior Assistant and promoting the 2nd respondent from the post of Senior Assistant to the post of Superintendent, and posting them to work at Yadagirigutta Temple and Vemulawada Temple respectively, and the same is illegal and

arbitrary.

He further submits that the petitioner is possessing qualification of Degree, while the 2nd respondent has passed only S.S.C., and since as per Rule 39 of the Rules, the minimum qualification required to hold Category-4 post, namely Junior Assistant, is pass in Intermediate or equivalent examination, the very initial appointment of the 2nd respondent as Junior Assistant, is bad, and as such, he could not have been given promotion as Senior Assistant, much less, promoted as Superintendent, and more particularly when the Rules have been given retrospective effect.

On behalf of the 1st respondent, the Deputy Commissioner (Services), filed counter and additional-counter affidavit. The 2nd respondent also filed separate counter. The learned Government Pleader for Endowments and the learned counsel for the 2nd respondent, reiterating the counter averments submitted that the petitioner belongs to Mahankali Temple, while the 2nd respondent belongs to Ganesh Temple, and as per Rule 33 of the Rules, the said Temples shall be their respective units, for the purpose of recruitment, seniority and promotion.

They submitted that since the promotion of the petitioner as Superintendent in Ganesh Temple, was found to be not in accordance with Rule 33 of the Rules, his promotion as Superintendent, was set aside by this Court in W.P. No. 9636 of 2004, by orders dated 10.09.2004, which was even confirmed in appeal in W.A. No. 1434 of 2004, by judgment dated 22.08.2006, of a Division Bench of this Court. In implementation of the said judgment, the 1st respondent issued the impugned proceedings, reverting the petitioner from the post of Superintendent to the post of Senior Assistant and promoting the petitioner from the post of Senior Assistant to the post of Superintendent, and transferred them to Yadagirigutta Temple and Vemulawada Temple respectively, and no interference is called for therewith.

They submitted that the 2nd respondent was appointed as Junior Assistant under the A.P. Charitable and Hindu Religious Institutions and Endowments Office Holders and Servants Rules, 1983, issued by the Government in G.O. Ms. No. 1478, Revenue (Endowments-VI) Department, dated 17.11.1986, which were given

retrospective effect from 03.02.1983. As per Rule 44 of the said Rules, the qualifications required to hold Category-3 post, namely Junior Assistant, is pass in S.S.C., and for promotion to Category-2 post, namely Senior Assistant, is pass in S.S.C. or equivalent examination, Accounts Test for Subordinate Officers-Part-I and Endowments Department Test Parts-I and II, and the qualification required for promotion to the post of Superintendent, which is Category-1 post, is that the candidate must have passed the Accounts Test for Subordinate Officers Part I and Endowments Departments Tests Parts I and II. Since the 2nd respondent possesses all the qualifications, that are required for promotion as Superintendent, it cannot be said that he is not eligible for promotion as Superintendent.

They further submitted that since the post of Superintendent in Ganesh Temple, was filled up by transfer, in the general transfers effected, and the 1st respondent, in implementation of the judgment of the Division Bench of this Court in the writ appeal, promoted the 2nd respondent from the post of Senior Assistant to the post of Superintendent, and transferred him to Vemulawada Temple because no post of Superintendent was available in Ganesh Temple, and likewise, reverted the petitioner from the post of Superintendent to the post of Senior Assistant, and transferred him to Yadagirigutta Temple as no post of Senior Assistant was available in Mahankali Temple.

They further submitted that the power of the 1st respondent under Section 39 of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 to transfer the temple employees from one unit to another unit, was upheld by this Court in W.P. No. 8995 of 2006 by judgment dated 24.04.2007, which was even confirmed by a Division Bench of this Court in W.A. No. 464 of 2007, by judgment dated 07.06.2007. Hence, the petitioner cannot question the impugned proceedings issued by the 1st respondent, which in fact, has been issued, in compliance of the judgment of this Court in W.P. No. 9636 of 2004, dated 10.09.2004, as confirmed by a Division Bench of this Court in W.A. No. 1434 of 2004, dated 22.08.2006.

Heard the learned counsel for the petitioner, the learned Government Pleader for Endowments for the 1st respondent, the learned counsel for the 2nd respondent and the learned counsel for the

3rd respondent.

Admittedly, the impugned order, reverting the petitioner from the post of Superintendent to the post of Senior Assistant and promoting the 2nd respondent from the post of Senior Assistant to the post of Superintendent and transferring them to Yadagirigutta Temple and Vemulawada Temple respectively, has been issued by the 1st respondent in the course of implementation of the judgment of this Court in W.P. No. 9636 of 2004, dated 10.09.2004, as confirmed by a Division Bench of this Court in W.A. No. 1434 of 2004, dated 22.08.2006. Under the said judgments, the promotion of the petitioner, as Superintendent, in Ganesh Temple, was set aside, holding that the parent unit of the employee shall be the unit for the purpose of recruitment, seniority and promotion, by virtue of Rule 33 of the Rules. The said judgments attained finality as no appeal was preferred before the Hon'ble Supreme Court. Since the said judgments attained finality, and the impugned order having been issued by the 1st respondent in implementation of the said judgments, the petitioner now cannot be allowed to contend that since Vemulawada Temple is neither the unit of the petitioner nor of the 2nd respondent, his promotion as Superintendent in the said Temple cannot be disturbed, and more so when it is the specific case of the respondents that as there was no post of Superintendent available in Ganesh Temple to accommodate the 2nd respondent, to which temple he belongs, he was transferred to Vemulawada Temple, and likewise, as there was no post of Senior Assistant available in Mahankali Temple to accommodate the petitioner, to which temple he belongs, he was transferred to Yadagirigutta Temple.

Further more, since the power of the 1st respondent under Section 39 of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1966 to transfer the temple employees from one institution to another institution, was upheld by this Court in W.P. No. 8995 of 2006, dated 22.04.2007, as confirmed by the Division Bench of this Court in W.A. No. 464 of 2007, dated 07.06.2007, the petitioner cannot be allowed to question his transfer to Yadagiritutta Temple. The petitioner by filing the present writ petition, cannot seek to disturb the findings already recorded by this on the issues raised and settled in the judgments of the Division Benches of this Court,

referred to above.

The next contention urged by the petitioner is that as per Section 39 of the A.P. Charitable and Hindu Religious and Endowments Office Holders and Servants Service Rules, 2000, which have been given retrospective effect, to hold the post of Junior Assistant, one must have passed Intermediate or equivalent examination. He submits that the 2nd respondent only passed S.S.C., and as such, he was not entitled to be appointed as Junior Assistant itself, muchless be promoted as Senior Assistant and Superintendent, even though he passed the Accounts Test for Subordinate Officers Part-I and Endowments Department Test Parts-I and II, and more so when to hold the posts of Senior Assistant and Superintendent, one should possess Degree qualification, and since the petitioner possess degree qualification, his promotion Superintendent should not be disturbed.

I am unable to agree with this contention of the petitioner. The 2nd respondent, admittedly, was not appointed under the Rules framed in 2000, but was appointed as Junior Assistant on 01.05.1983 under the 1983 Rules. Since the 2nd respondent was appointed under the 1983 Rules, the Rules framed in 2000, cannot be made applicable to him. As per Rule 44 of the 1983 Rules, the recruitment to the post of Junior Assistant, which is Category-3 post, is made by way of direct recruitment, or by transfer from Category 4 or by promotion from Categories 6 and 7 or by loan of services of Junior Assistants of the Endowments Department, and the qualification prescribed to hold the said post is pass in S.S.C. or equivalent examination; the recruitment to the post of Senior Assistant, which is Category-2 post, is 25% posts by way of direct recruitment, promotion from Categories-3 and 4 or by loan of services of Senior Assistant of the Endowments Department, in the case of direct recruitment, the candidates should hold Degree from a recognized university, and in the case of promotion or by loan of services, the candidates must have passed S.S.C. or equivalent examination, pass in Accounts Test for Subordinate Officers-Part-I and Endowments Department Test Parts-I and II; and the recruitment to the post of Superintendent, which is Category-1 post, is made by way of promotion from Category-2 of Class-1 or by loan of services of Superintendents of Endowments Department, and the qualification required are, the candidates must have passed the Accounts Test for

Subordinate Officers Part-I and Endowments Departments Test Parts-I and II.

Admittedly, on 01.05.1983, when the 2nd respondent was appointed as Junior Assistant in Ganesh Temple, the qualification to hold the post of Junior Assistant under the 1983 Rules, was S.S.C. As the 2nd respondent possessed the said qualification, his appointment as Junior Assistant, cannot be said to have been made contrary to the Rules. The next higher posts for promotion from the post of Junior Assistant, are Senior Assistant (except 25% by way of direct recruitment) and thereafter, Superintendent. The said posts being promotional posts, and the 2nd respondent having been promoted to the said posts, upon his passing the required Accounts Test for Subordinate Officers Part-I and Endowments Department Test Parts-I and II, as is required under the Rules, his promotions to the said posts, are not open to question, and more so when this Court in W.P. No. 9636 of 2004 filed by the 2nd respondent, assailing the promotion of the petitioner, by orders dated 10.09.2004, concluded that a Junior Assistant has to pass the Accounts Test for Subordinate Officers Part-I to get eligibility for promotion as Senior Assistant or he should pass the test while on probation, and that the 2nd respondent passed the Accounts Test for Subordinate Officers Part-I and after promotion as Senior Assistant in the year 1997 got qualified to the post of Superintendent after completing more than five (05) years service in the category of Senior Assistant. Since the 2nd respondent was held to be qualified for promotion as Superintendent, he was promoted to the said post under the impugned order.

At any rate, under Rule 35 of the 2000 Rules, the special provisions from Rules 35 to 47, are made applicable to Office Holders and Servants of eight institutions mentioned thereunder, and the qualifications, if any, prescribed under the said Rules, is applicable only to office holders and servants of the said temples. Since neither the petitioner nor the 2nd respondent belong to any of the eight Temples mentioned therein, the higher qualifications prescribed therein, for holding the posts of Junior Assistant, Senior Assistant and Superintendent, are not applicable to them.

In the above view of the matter, the contention of the petitioner that since the 2nd respondent does not possess the requisite

qualifications even to be appointed as Junior Assistant, he could not have been given further promotions as Senior Assistant and Superintendent, cannot be accepted.

The writ petition is devoid of merit, and the same is accordingly dismissed.

N.V. RAMANA, J.

Date: 2nd November, 2007.
KSR